

EXHIBIT 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MICHAEL GAFFNEY,

Plaintiff,

v.

*MUHAMMAD ALI ENTERPRISES LLC,
a New York Limited Liability
Company; AUTHENTIC BRANDS
GROUP LLC, a New York Limited
Liability Company; ROOTS OF, INC.,
a California corporation d/b/a
"ROOTS OF FIGHT;"
and DOES 1-10,*

Defendants.

Case Nos. 1:18-CV-08770
1:20-CV-07113

Judge: Hon. George B. Daniels
Magistrate: Hon. Ona T. Wang

PRELIMINARY EXPERT REPORT OF PROFESSOR JEFFREY SEDLIK

Submitted June 30, 2021

CONFIDENTIAL

I have been engaged by plaintiff Michael Gaffney ("Gaffney") in the above-referenced matters ("Matters") brought by Gaffney against defendants Muhammad Ali Enterprises LLC ("MAE"), Authentic Brands Group LLC ("ABG"), and Roots of, Inc. ("ROF") d/b/a "Roots of Fight," (collectively, "Defendants") to provide expert testimony as set forth below.

I have been asked by Gaffney to provide expert opinions on practices, standards, and procedures in the photography and advertising industries, both in general and with respect to business transactions, actions and other occurrences involving or related to the parties in the Matters. Gaffney also requested that I opine on copyright registration issues and workflows, contractual issues, image licensing issues, applicable damages, and other issues that have arisen or are likely to arise in the Matters. I have also been asked to rebut any opinions expressed by Defendants' experts.

My opinions are based in part on more than 25 years of service in high-level positions in trade associations and standard-setting bodies in the photography, advertising, product marketing, technology, and design industries. I have been an internationally recognized advertising photographer for more than 30 years, working with many clients, observing and interacting with large numbers of professional photographers, advertising agencies, design firms, corporate clients, stock photography agencies, product manufacturers, and others in the United States and abroad. I have served as Project Manager in projects involving the development, operation, and maintenance of websites, web applications, and other applications. I have also owned and operated a publishing company, producing and selling photography-related products for more than 20 years.

In addition to my personal knowledge, my opinions are based on an independent examination of documents and materials produced in the Matter to date. Should additional relevant information become available, I respectfully reserve the right to amend or supplement my opinions as necessary.

This Expert Report ("Report") has been prepared in connection with the above-referenced Matter. Section VI of the Report outlines my opinions.

If called upon as a witness in this Matter, I could and would provide the following testimony.

I. QUALIFICATIONS

I currently serve as the President and CEO of the PLUS Coalition. "PLUS" is an acronym for "Picture Licensing Universal System." The PLUS Coalition is a non-profit, international standards body and trade association representing the shared business interests of all industries involved in the creation, licensing, and use of photography and illustration, including photographers, illustrators, advertisers, advertising agencies, graphic design studios, publishers, artists' representatives, museums, libraries, stock photo agencies, and all other photography licensees and licensors. The PLUS Coalition develops, propagates, and maintains universal standards for use by licensees and licensors in transactions involving photography. As a founding member of the PLUS Board of Directors, I developed the core concept of the Coalition and its copyright licensing standards.

I am the past National President of the Advertising Photographers of America ("APA"), the leading trade association for commercial photographers in the United States. I also served APA as Chief National Advisor on Licensing and Copyright, and provided leadership level guidance on topics including copyright, photography, advertising, industry standards, contract terms, model release terms, and business practices. I represented the APA in discussions with the United States Copyright Office and worked with organizations around the world to develop and maintain standards for licensing terms, licensing agreements, model releases, and other photography-related business matters. On a local basis, I also served on the Board of Directors and Legal Affairs Committee of the Los Angeles Chapter of the APA, and as Chairman of the Model Release Working Group, charged with developing

international standards for model releases, communication of usage rights, and model release workflow.

I currently serve on the Photo Metadata Working Group for the International Press Telecommunications Council ("IPTC"), the global standards body for photography metadata. In the past, I have served on the Digital Image Submission Guidelines Working Group for Universal Digital Image Guidelines ("UPDIG"), and as an "Invited Expert" on the Permissions and Obligations Working Group of the World Wide Web Consortium ("W3C"). Until November 2019, I served as a Director of the American Society for Collective Rights Licensing ("ASCRL"), a collective management organization for the visual arts. I also serve as a legal and legislative advisor to the American Society of Media Photographers ("ASMP"), and as a member of the ASMP Copyright Speakers Bureau. I authored the "Photography Licensing" chapter of "*ASMP Professional Business Practices in Photography*," the predominant business operations reference for professional photographers.

I am a frequent speaker at copyright events hosted by the United States Copyright Office, the United States Patent Office, and the United States Department of Commerce. At the request of the Register of Copyrights, I served as a guest instructor at Stanford Law School in conjunction with a United States Copyright Office-sponsored Copyright Practicum. I have been engaged by the United States Copyright Office to train new Registration Examiners on visual art copyright registration issues from 2010 to present.

I have been a faculty member of the American Law Institute for Continuing Legal Education events, providing instruction on licensing practices and on the practical application of copyright law in the visual arts. I have been a guest speaker and guest instructor on copyright law and licensing for leading institutions and organizations, including Duke University School of Law, New York University School of Law, Oxford University School of Law, American University Washington College of Law, Antonin Scalia George Mason University Law School, Fordham University School of Law, Joint Photographic Experts Group (JPEG), International Federation of Reproduction Rights Organizations, Smithsonian Institution, International

Confederation of Societies of Authors and Composers, National Association of Recording Merchandisers, Digital Library Federation, the Copyright Society of the United States, and others.

In addition, I have testified repeatedly before the Judiciary Committees of both the United States Senate and House of Representatives, summoned to advise Congress on copyright law issues and legislative reform. I work closely with legislators, stakeholder groups, and the United States Copyright Office on legislation, regulations, and policy issues related to copyright protections, registration, and remedies. I have assisted legislators and government agencies in drafting and revising federal copyright legislation. I am an active participant in the Copyright Alliance, serving on the Creators Advisory Board, Academic Advisory Board, and the United States Copyright Office Modernization Working Group.

In addition to my work in the United States, I serve on the Advisory Board of the Beijing Intellectual Property Expertise Center of Judicature, a governmental agency overseeing copyright matters before the People's Court of China. I also serve as a founding Director of the Linked Content Coalition ("LCC"), a global non-profit organization dedicated to facilitating and expanding the legitimate use of content through interoperable identifiers and metadata. I have also been a partner in the Rights Data Integration initiative, a European Commission project focusing on the integration of systems that manage and trade intellectual property rights online across all types of content, usage, and media. I was a partner in the Copyright Hub initiative in the United Kingdom, and a participant in the European Commission's Metadata Image Library Exploitation project. I was a partner in the Initiative for a Competitive Online Marketplace, based in Vienna, Austria, and have been an invited speaker on intellectual property law at the House of Lords of the Parliament of the United Kingdom.

Adobe Systems, creator of Photoshop and other digital image and design software, selected me to be a member of its "Prerelease Team" and its "Adobe Photographers' Council," a group of twelve leading photographers who advise the company on trends in digital photography and the photography industry at large.

Selected honors include the 2005 Industry Leadership Award from the International Photography Council of the United Nations, the 2006 PhotoMedia Photographer of the Year award, the 2007 APA Industry Advocacy Award, and in 2008, a "Lifetime Achievement Award," and honorary Master's Degree from the Brooks Institute of Photography, recognizing "Mastery of the Craft and Business of Photography."

I am a long-time faculty member and Professor at the Art Center College of Design in Los Angeles, where I sit on the Intellectual Property Committee and teach advanced courses on the artistic, technical, production, legal, and business aspects of traditional and digital photography. My curriculum includes advanced instruction on legal topics such as copyright law, copyright registration, copyright licensing, and contract interpretation. Technical topics include digital techniques and advanced lighting for photography of people, products, and automobiles. I also provide instruction on advertising, marketing, branding, and consumer behavior.

After more than 30 years as an award-winning commercial photographer and studio owner, I continue to operate an advertising and entertainment photography production company in California, with a client list that includes such companies as Nike, Federal Express, Farmers Insurance, SBC, GTE, NBC, Sony, AT&T, Blue Cross, Epson, IKEA, United Airlines, Warner Brothers, Toyota, Nestlé, Disney, Bank of America, and others. My publishing company, Mason Editions, produces and distributes fine photographic reproductions.

I frequently provide forensic image analysis in civil and criminal matters, and provide consulting services to organizations and individuals on issues related to copyright, licensing, negotiating, and business practices and procedures related to photography, advertising, and modeling. I have testified as an expert witness during the period 2002 to present, in litigation involving photography, illustration, product design, copyright, metadata, advertising, branding, graphic design, right of publicity/privacy, model releases, breach of contract, criminal matters, and other topics. Matters in which I have provided testimony within the last four years are:

necessary actions to prevent further reproduction, distribution, public display, and creation of derivative works of the copies of the Photographs then in the possession of, or under the control of Defendants, its vendors, partners, customers and affiliates.

H. Defendants Did Not Fulfill Defendants' Obligations on Expiration of the 2011 Agreement

Defendants did not take necessary action to halt the public display, public distribution, reproduction and creation of derivatives of the Photographs. As a result of Defendants' failure to perform its obligations, Defendants and their affiliates and customers continued to make the Photographs available for public distribution and display without license and without authorization by Gaffney after the expiration of the 2011 Agreement.

I. Actual Damages – Market Rates

Actual damages are determined in part by the fee that a willing seller would have reasonably required a willing buyer to pay at the time of the infringement. In the photography marketplace, each licensor sets his/her own fees, based upon criteria defining the scope of a license.

I requested that Gaffney provide an accounting of the usages discovered to date. Gaffney provided an accounting, "Table of Usages" attached as Exhibit F. Where data for one or more criteria were not disclosed by Defendants, it is my understanding that Gaffney, in populating the Table of Usages (Exhibit F), made the best approximation possible under the circumstances. Gaffney's Notes to Table of Usages entries are attached as Exhibit I.

I calculated fees based on the information available to me, including some or all of these factors: the media in which each of the Photographs was reproduced, circulation, size, placement, versions, territory, and period of use.

In addition to the license fee computations performed by obtaining reference fee quotes reasonably matching the alleged unauthorized usages to the greatest extent possible, I have relied on my personal knowledge and experience in image licensing and in the development and management of industry standards for image licensing. There is no punitive measure to my calculations.

Based on the information available to me as of this writing, and based on my personal knowledge, experience, and a review of the documents, materials, and testimony in the Matters, reasonable actual damages, if applicable, would be as follows:

Actual Damages by Media Category

Media Category	Actual Damages
Digital Media - Social Media	\$90,240
Retail, product and packaging - Prints and Posters	\$235,998.67
Retail, product and packaging - Apparel	\$36,426.67
Actual Damages	\$362,665.00

The total amount, \$362,665 is the fair market value of licenses of the Photographs for the alleged unauthorized usages by Defendants, without consideration of the scarcity of comparable photographs, and without consideration of competitive use of the Photographs by Defendants. For a detailed accounting of the calculations supporting this total, see Exhibit L and the additional supporting exhibits listed below.

An explanation of the tables documenting the calculation of damages is attached as Exhibit M.

J. Actual Damages Multiplier for Scarcity

The actual damages estimated above do not contemplate the scarcity of the Photographs. Scarce images typically demand significantly greater license fees than common images, often 3 to 5 times the fee for a common image. Application of a multiplier is necessary and appropriate to adjust the average market rate for a common photograph to a fee applicable to a license for a rare or scarce photograph. The application of a scarcity multiplier is not a punitive measure. The scarcity multiplier serves only to adjust the fair market value of common photographs to the value of a relatively scarce photograph.

Gaffney's photographs of Ali provide a unique perspective on an important period in Ali's life and career. See Exhibit N for details. Given the unique qualities and subject matter of the Photographs, the Court should consider the application of a non-punitive scarcity multiplier in the range of 3x to 5x, to adjust the fair market value of a common Ali photograph to that of the Photographs.

K. Actual Damages Multiplier for Competitive Use

The above calculations do not contemplate a scenario in which an image licensor is approached by a direct competitor seeking to purchase licenses to make competing use of the licensor's photographs. Under such a scenario the image licensor would reasonably expect to require and receive a substantially greater fee than would be required of a non-competitor, and the competitor would reasonably expect to pay such a substantially greater fee.

Based on my knowledge and experience, a licensor would reasonably require a competitor to pay a license fee that is 5 to 10 times greater than market rates otherwise available to a non-competing licensee.